

108TH CONGRESS  
1ST SESSION

# H. R. 1320

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## AN ACT

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users.



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To amend the National Telecommunications and Information Administration Organization Act to facilitate the re-allocation of spectrum from governmental to commercial users.

1       *Be it enacted by the Senate and House of Representa-*  
2   *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Commercial Spectrum  
3 Enhancement Act”.

4 **SEC. 2. RELOCATION OF ELIGIBLE FEDERAL ENTITIES FOR**  
5 **THE REALLOCATION OF SPECTRUM FOR**  
6 **COMMERCIAL PURPOSES.**

7       Section 113(g) of the National Telecommunications  
8 and Information Administration Organization Act (47  
9 U.S.C. 923(g)) is amended by striking paragraphs (1)  
10 through (3) and inserting the following:

11           “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-  
12 eral entity that operates a Federal Government sta-  
13 tion assigned to a band of frequencies specified in  
14 paragraph (2) and that incurs relocation costs be-  
15 cause of the reallocation of frequencies from Federal  
16 use to non-Federal use shall receive payment for  
17 such costs from the Spectrum Relocation Fund, in  
18 accordance with section 118 of this Act. For pur-  
19 poses of this paragraph, Federal power agencies ex-  
20 empted under subsection (c)(4) that choose to relo-  
21 cate from the frequencies identified for reallocation  
22 pursuant to subsection (a), are eligible to receive  
23 payment under this paragraph.

24           “(2) ELIGIBLE FREQUENCIES.—The bands of  
25 eligible frequencies for purposes of this section are  
26 as follows:

“(A) the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band of frequencies; and

“(B) any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except for bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95–32 (1995).

“(3) DEFINITION OF RELOCATION COSTS.—For purposes of this subsection, the term ‘relocation costs’ means the costs incurred by a Federal entity to achieve comparable capability of systems, regardless of whether that capability is achieved by relocating to a new frequency assignment or by utilizing an alternative technology. Such costs include—

“(A) the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation;

1           “(B) the costs of all engineering, equip-  
2           ment, software, site acquisition and construc-  
3           tion costs, as well as any legitimate and pru-  
4           dent transaction expense, including outside con-  
5           sultants, and reasonable additional costs in-  
6           curred by the Federal entity that are attrib-  
7           utable to relocation, including increased recur-  
8           ring costs associated with the replacement fa-  
9           cilities;

10           “(C) the costs of engineering studies, eco-  
11           nomic analyses, or other expenses reasonably  
12           incurred in calculating the estimated relocation  
13           costs that are provided to the Commission pur-  
14           suant to paragraph (4) of this subsection;

15           “(D) the one-time costs of any modifica-  
16           tion of equipment reasonably necessary to ac-  
17           commodate commercial use of such frequencies  
18           prior to the termination of the Federal entity’s  
19           primary allocation or protected status, when the  
20           eligible frequencies as defined in paragraph (2)  
21           of this subsection are made available for private  
22           sector uses by competitive bidding and a Fed-  
23           eral entity retains primary allocation or pro-  
24           tected status in those frequencies for a period

1 of time after the completion of the competitive  
2 bidding process; and

3 “(E) the costs associated with the acceler-  
4 ated replacement of systems and equipment if  
5 such acceleration is necessary to ensure the  
6 timely relocation of systems to a new frequency  
7 assignment.

8 “(4) NOTICE TO COMMISSION OF ESTIMATED  
9 RELOCATION COSTS.—

10 “(A) The Commission shall notify the  
11 NTIA at least 18 months prior to the com-  
12 mencement of any auction of eligible fre-  
13 quencies defined in paragraph (2). At least 6  
14 months prior to the commencement of any such  
15 auction, the NTIA, on behalf of the Federal en-  
16 tities and after review by the Office of Manage-  
17 ment and Budget, shall notify the Commission  
18 of estimated relocation costs and timelines for  
19 such relocation.

20 “(B) Upon timely request of a Federal en-  
21 tity, the NTIA shall provide such entity with in-  
22 formation regarding an alternative frequency  
23 assignment or assignments to which their  
24 radiocommunications operations could be relo-  
25 cated for purposes of calculating the estimated

1 relocation costs and timelines to be submitted  
2 to the Commission pursuant to subparagraph  
3 (A).

4 “(C) To the extent practicable and con-  
5 sistent with national security considerations,  
6 the NTIA shall provide the information re-  
7 quired by subparagraphs (A) and (B) by the ge-  
8 ographic location of the Federal entities’ facili-  
9 ties or systems and the frequency bands used  
10 by such facilities or systems.

11 “(5) NOTICE TO CONGRESSIONAL COMMITTEES  
12 AND GAO.—The NTIA shall, at the time of providing  
13 an initial estimate of relocation costs to the Commis-  
14 sion under paragraph (4)(A), submit to the Commit-  
15 tees on Appropriations and Energy and Commerce  
16 of the House of Representatives, the Committees on  
17 Appropriations and Commerce, Science, and Trans-  
18 portation of the Senate, and the Comptroller Gen-  
19 eral a copy of such estimate and the timelines for re-  
20 location.

21 “(6) IMPLEMENTATION OF PROCEDURES.—The  
22 NTIA shall take such actions as necessary to ensure  
23 the timely relocation of Federal entities’ spectrum-  
24 related operations from frequencies defined in para-  
25 graph (2) to frequencies or facilities of comparable



1 capability. Upon a finding by the NTIA that a Fed-  
 2 eral entity has achieved comparable capability of sys-  
 3 tems by relocating to a new frequency assignment or  
 4 by utilizing an alternative technology, the NTIA  
 5 shall terminate the entity’s authorization and notify  
 6 the Commission that the entity’s relocation has been  
 7 completed. The NTIA shall also terminate such enti-  
 8 ty’s authorization if the NTIA determines that the  
 9 entity has unreasonably failed to comply with the  
 10 timeline for relocation submitted by the Director of  
 11 the Office of Management and Budget under section  
 12 118(d)(2)(B).”.

13 **SEC. 3. MINIMUM AUCTION RECEIPTS AND DISPOSITION OF**  
 14 **PROCEEDS.**

15 (a) AUCTION DESIGN.—Section 309(j)(3) of the  
 16 Communications Act of 1934 (47 U.S.C. 309(j)(3)) is  
 17 amended—

18 (1) by striking “and” at the end of subpara-  
 19 graph (D);

20 (2) by striking the period at the end of sub-  
 21 paragraph (E) and inserting “; and”; and

22 (3) by adding at the end the following new sub-  
 23 paragraph:

24 “(F) for any auction of eligible frequencies  
 25 described in section 113(g)(2) of the National

1 Telecommunications and Information Adminis-  
2 tration Organization Act (47 U.S.C. 923(g)(2)),  
3 the recovery of 110 percent of estimated reloca-  
4 tion costs as provided to the Commission pursu-  
5 ant to section 113(g)(4) of such Act.”.

6 (b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE  
7 FREQUENCIES.—Section 309(j) of such Act is further  
8 amended by adding at the end the following new para-  
9 graph:

10 “(15) SPECIAL AUCTION PROVISIONS FOR ELI-  
11 GIBLE FREQUENCIES.—

12 “(A) SPECIAL REGULATIONS.—The Com-  
13 mission shall revise the regulations prescribed  
14 under paragraph (4)(F) of this subsection to  
15 prescribe methods by which the total cash pro-  
16 ceeds from any auction of eligible frequencies  
17 described in section 113(g)(2) of the National  
18 Telecommunications and Information Adminis-  
19 tration Organization Act (47 U.S.C. 923(g)(2))  
20 shall at least equal 110 percent of the total esti-  
21 mated relocation costs provided to the Commis-  
22 sion pursuant to section 113(g)(4) of such Act.

23 “(B) CONCLUSION OF AUCTIONS CONTIN-  
24 GENT ON MINIMUM PROCEEDS.—The Commis-  
25 sion shall not conclude any auction of eligible

1 frequencies described in section 113(g)(2) of  
2 such Act if the total cash proceeds attributable  
3 to such spectrum are less than 110 percent of  
4 the total estimated relocation costs provided to  
5 the Commission pursuant to section 113(g)(4)  
6 of such Act. If the Commission is unable to  
7 conclude an auction for the foregoing reason,  
8 the Commission shall cancel the auction, return  
9 within 45 days after the auction cancellation  
10 date any deposits from participating bidders  
11 held in escrow, and absolve such bidders from  
12 any obligation to the United States to bid in  
13 any subsequent reauction of such spectrum.

14 “(C) AUTHORITY TO ISSUE PRIOR TO DE-  
15 AUTHORIZATION.—In any auction conducted  
16 under the regulations required by subparagraph  
17 (A), the Commission may grant a license as-  
18 signed for the use of eligible frequencies prior  
19 to the termination of an eligible Federal entity’s  
20 authorization. However, the Commission shall  
21 condition such license by requiring that the li-  
22 censee cannot cause harmful interference to  
23 such Federal entity until such entity’s author-  
24 ization has been terminated by the National

1           Telecommunications and Information Adminis-  
2           tration.”.

3           (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-  
4   tion 309(j) of the Communications Act of 1934 (47 U.S.C.  
5   309(j)) is amended—

6           (1) in subparagraph (A), by inserting “or sub-  
7   paragraph (D)” after “subparagraph (B)”; and

8           (2) by adding at the end the following new sub-  
9   paragraph:

10           “(D) DISPOSITION OF CASH PROCEEDS.—  
11   Cash proceeds attributable to the auction of any  
12   eligible frequencies described in section  
13   113(g)(2) of the National Telecommunications  
14   and Information Administration Organization  
15   Act (47 U.S.C. 923(g)(2)) shall be deposited in  
16   the Spectrum Relocation Fund established  
17   under section 118 of such Act, and shall be  
18   available in accordance with that section.”.

19   **SEC. 4. ESTABLISHMENT OF FUND AND PROCEDURES.**

20           Part B of the National Telecommunications and In-  
21   formation Administration Organization Act is amended by  
22   adding after section 117 (47 U.S.C. 927) the following  
23   new section:

1   **“SEC. 118. SPECTRUM RELOCATION FUND.**

2           “(a) ESTABLISHMENT OF SPECTRUM RELOCATION  
3 FUND.—There is established on the books of the Treasury  
4 a separate fund to be known as the ‘Spectrum Relocation  
5 Fund’ (in this section referred to as the ‘Fund’), which  
6 shall be administered by the Office of Management and  
7 Budget (in this section referred to as ‘OMB’), in consulta-  
8 tion with the NTIA.

9           “(b) CREDITING OF RECEIPTS.—The Fund shall be  
10 credited with the amounts specified in section  
11 309(j)(8)(D) of the Communications Act of 1934 (47  
12 U.S.C. 309(j)(8)(D)).

13          “(c) USED TO PAY RELOCATION COSTS.—The  
14 amounts in the Fund from auctions of eligible frequencies  
15 are authorized to be used to pay relocation costs, as de-  
16 fined in section 113(g)(3) of this Act, of an eligible Fed-  
17 eral entity incurring such costs with respect to relocation  
18 from those frequencies.

19          “(d) FUND AVAILABILITY.—

20               “(1) APPROPRIATION.—There are hereby ap-  
21 propriated from the Fund such sums as are required  
22 to pay the relocation costs specified in subsection  
23 (c).

24               “(2) TRANSFER CONDITIONS.—None of the  
25 funds provided under this subsection may be trans-  
26 ferred to any eligible Federal entity—

1           “(A) unless the Director of OMB has de-  
2           termined, in consultation with the NTIA, the  
3           appropriateness of such costs and the timeline  
4           for relocation; and

5           “(B) until 30 days after the Director of  
6           the OMB has submitted to the Committees on  
7           Appropriations and Energy and Commerce of  
8           the House of Representatives, the Committees  
9           on Appropriations and Commerce, Science, and  
10          Transportation of the Senate, and the Comp-  
11          troller General a detailed plan describing how  
12          the sums transferred from the Fund will be  
13          used to pay relocation costs in accordance with  
14          such subsection and the timeline for such relo-  
15          cation.

16          “(3) REVERSION OF UNUSED FUNDS.—Any  
17          auction proceeds in the Fund that are remaining  
18          after the payment of the relocation costs that are  
19          payable from the Fund shall revert to and be depos-  
20          ited in the general fund of the Treasury not later  
21          than 8 years after the date of the deposit of such  
22          proceeds to the Fund.

23          “(e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

24          “(1) TRANSFER.—

1           “(A) Amounts made available pursuant to  
2           subsection (d) shall be transferred to eligible  
3           Federal entities, as defined in section 113(g)(1)  
4           of this Act.

5           “(B) An eligible Federal entity may receive  
6           more than one such transfer, but if the sum of  
7           the subsequent transfer or transfers exceeds 10  
8           percent of the original transfer—

9                   “(i) such subsequent transfers are  
10                  subject to prior approval by the Director of  
11                  OMB as required by subsection (d)(2)(A);

12                  “(ii) the notice to the committees con-  
13                  taining the plan required by subsection  
14                  (d)(2)(B) shall be not less than 45 days  
15                  prior to the date of the transfer that  
16                  causes such excess above 10 percent;

17                  “(iii) such notice shall include, in ad-  
18                  dition to such plan, an explanation of need  
19                  for such subsequent transfer or transfers;  
20                  and

21                  “(iv) the Comptroller General shall,  
22                  within 30 days after receiving such plan,  
23                  review such plan and submit to such com-  
24                  mittees an assessment of the explanation  
25                  for the subsequent transfer or transfers.

1           “(C) Such transferred amounts shall be  
2           credited to the appropriations account of the el-  
3           igible Federal entity which has incurred, or will  
4           incur, such costs, and shall, subject to para-  
5           graph (2), remain available until expended.

6           “(2) RETRANSFER TO FUND.—An eligible Fed-  
7           eral entity that has received such amounts shall re-  
8           port its expenditures to OMB and shall transfer any  
9           amounts in excess of actual relocation costs back to  
10          the Fund immediately after the NTIA has notified  
11          the Commission that the entity’s relocation is com-  
12          plete, or has determined that such entity has unrea-  
13          sonably failed to complete such relocation in accord-  
14          ance with the timeline required by subsection  
15          (d)(2)(A).”.

16 **SEC. 5. TELECOMMUNICATIONS DEVELOPMENT FUND.**

17          Section 714(f) of the Communications Act of 1934  
18          (47 U.S.C. 614(f)) is amended to read as follows:

19          “(f) LENDING AND CREDIT OPERATIONS.—Loans or  
20          other extensions of credit from the Fund shall be made  
21          available to an eligible small business on the basis of—

22                 “(1) the analysis of the business plan of the eli-  
23                 gible small business;

24                 “(2) the reasonable availability of collateral to  
25                 secure the loan or credit extension;



1           “(3) the extent to which the loan or credit ex-  
2           tension promotes the purposes of this section; and

3           “(4) other lending policies as defined by the  
4           Board.”.

5 **SEC. 6. CONSTRUCTION.**

6           Nothing in this Act is intended to modify section  
7 1062(b) of the National Defense Authorization Act for  
8 Fiscal Year 2000 (Public Law 106–65).

9 **SEC. 7. ANNUAL REPORT.**

10          The National Telecommunications and Information  
11 Administration shall submit an annual report to the Com-  
12 mittees on Appropriations and Energy and Commerce of  
13 the House of Representatives, the Committees on Appro-  
14 priations and Commerce, Science, and Transportation of  
15 the Senate, and the Comptroller General on—

16           (1) the progress made in adhering to the  
17 timelines applicable to relocation from eligible fre-  
18 quencies required under section 118(d)(2)(A) of the  
19 National Telecommunications and Information Ad-  
20 ministration Organization Act, separately stated on  
21 a communication system-by-system basis and on an  
22 auction-by-auction basis; and

23           (2) with respect to each relocated communica-  
24 tion system and auction, a statement of the estimate  
25 of relocation costs required under section 113(g)(4)

1 of such Act, the actual relocations costs incurred,  
2 and the amount of such costs paid from the Spec-  
3 trum Relocation Fund.

4 **SEC. 8. PRESERVATION OF AUTHORITY; NTIA REPORT RE-**  
5 **QUIRED.**

6 (a) SPECTRUM MANAGEMENT AUTHORITY RE-  
7 TAINED.—Except as provided with respect to the bands  
8 of frequencies identified in section 113(g)(2)(A) of the Na-  
9 tional Telecommunications and Information Administra-  
10 tion Organization Act (47 U.S.C. 923(g)(2)(A)) as amend-  
11 ed by this Act, nothing in this Act or the amendments  
12 made by this Act shall be construed as limiting the Fed-  
13 eral Communications Commission’s authority to allocate  
14 bands of frequencies that are reallocated from Federal use  
15 to non-Federal use for unlicensed, public safety, shared,  
16 or non-commercial use.

17 (b) NTIA REPORT REQUIRED.—Within 1 year after  
18 the date of enactment of this Act, the Administrator of  
19 the National Telecommunications and Information Ad-  
20 ministration shall submit to the Energy and Commerce  
21 Committee of the House of Representatives and the Com-  
22 merce, Science, and Transportation Committee of the Sen-  
23 ate a report on various policy options to compensate Fed-  
24 eral entities for relocation costs when such entities’ fre-

- 1 quencies are allocated by the Commission for unlicensed,
- 2 public safety, shared, or non-commercial use.

Passed the House of Representatives June 11, 2003.

Attest:

*Clerk.*